

REMARKS

Reconsideration is requested.

Claims 24-27 are pending.

Claims 26 and 27 are directed to polynucleic acids, and viruses containing the same, which are recited in claims to methods of detection in the related copending Application Serial No. 09/899,044, which has recently been allowed by the present Examiner. No new matter has been added.

The status of the parent applications has been updated in the above-amendment to the specification. The attached PTO-1449 Form lists references which are of record in the parent patents and return of an initialed copy of the same, pursuant to MPEP §609, is requested.

The Section 101 rejection of claims 24 and 25 is obviated by the above-amendments. Withdrawal of the Section 101 rejection is requested.

The Section 102, alternate Section 103, rejections of claim 24 over Sommer (Nucleic Acids Research 17(16):6749 (1898)) are traversed. Reconsideration and withdrawal of the rejections are requested in view of the following distinguishing comments.

The Examiner is referred to the first full paragraph of page 8 of the specification:

The expression "hybridize" or "target" refers to a hybridization experiment carried out according to any method known in the art, and allowing the detection of homologous targets (**including one or few mismatches**) **or** preferably completely homologous targets (**no mismatches allowed**).

As the target sequences to hybridize are recited in claim 24 (i.e., SEQ ID NOs:55-81) it should be clear that "no" or "one or a few" mismatches of the

specification and "up to 1 nucleotide mismatch" of the claims, will not to be read by one of ordinary skill as 17 to 21 mismatches in a sequence of 20 to 24 nucleotides length (i.e. 85% or more mismatches), as is suggested by Sommer et al. (1989) (see 1st sentence of second paragraph therein).

"From these results we suggest the following criteria for primers to be employed in cloning homologous genes: the length should be preferably between 20-24nt and the three 3' nucleotides should match completely."

Sommer does not teach or suggest the invention of claim 24 and withdrawal of the Sections 102/103 rejections is requested.

The rejection of claim 24 under the judicially created doctrine of obviousness-type double patenting, over claims 1-6 of U.S. Patent No. 6,180,768, should be withdrawn as no such patent issued. See, attached copy of 1243 OG 1040, February 27, 2001.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested.

The Examiner is requested to acknowledge receipt of certified copies of the priority documents in prior Application PCT/EP93/03325.

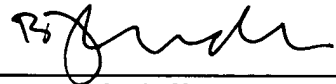
The Examiner is requested to confirm that the drawings filed April 19, 2002 are accepted.

Maertens
Serial No. **09/899,302**
March 26, 2003

Respectfully submitted,

NIXON & VANDERHYE P.C.

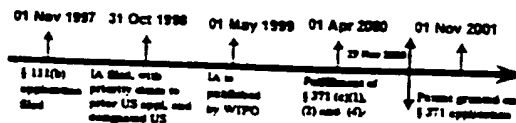
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requirements that claims the benefit of the filing date of an earlier United States application has no prior art date under post-AIPA § 102(e)(2). Any United States filing date prior to the filing date of an International Application is not relevant for § 102(e)(2) prior art purposes.



1. Post-AIPA § 102(e)(2) date of the patent: NONE

The patent is not available as prior art under post-AIPA § 102(e)(2) because there is no date under post-AIPA § 102(e)(2) against:

- (a) any application filed on or after 29 Nov 2000; or
- (b) any application which has been voluntarily published.

The patent is available under § 102(a) or (b) with a prior art date of 01 Nov 2001.

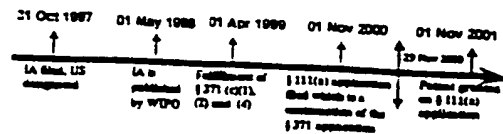
2. Pre-AIPA § 102(e) date of the patent: 01 Apr 2000

The patent is available as prior art against:

- (a) any application filed after 01 Apr 2000 but before 29 Nov 2000 which has not been voluntarily published.

Note: (1) There is no post-AIPA § 102(e)(2) date while there is a date under pre-AIPA § 102(e).

- (2) WIPO publication has a § 102(a) or (b) date of 01 May 1999.



1. Post-AIPA § 102(e)(2) date of the patent: 01 Nov 2000

The patent is available as prior art against:

- (a) any application filed on or after 29 Nov 2000; or
- (b) any application filed after 1 Nov 2000 which has been voluntarily published.

2. Pre-AIPA § 102(e) date of the patent: 01 Apr 1999

The patent is available as prior art against:

- (a) any application filed after 01 Apr 1999 but before 29 Nov 2000 which has not been voluntarily published.

Note: (1) There is a different post-AIPA § 102(e)(2) date than pre-AIPA § 102(e) date.

- (2) WIPO publication has a § 102(a) or (b) date of 01 May 1999.

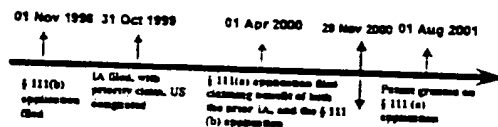
FOR FURTHER INFORMATION CONTACT: Jeanne Clark or Robert Clarke, Legal Advisors in the Office of Patent Legal Administration, by telephone at (703) 305-1622, by fax at (703) 305-1013, or by e-mail addressed to Jeanne.Clark@USPTO.gov or Robert.Clarke@USPTO.gov.

STEPHEN G. KUNIN

Deputy Commissioner for Patent Examination Policy

Example 6: Reference Patent issued from an Application filed under 35 U.S.C. § 111(a) Claiming the Benefit of an Intermediate International Application and a Prior Provisional Application.

For reference patents issued from applications filed under 35 U.S.C. § 111(a), which claim the benefit of an intermediate International Application under 35 U.S.C. §§ 120 and 365(c) and a prior United States provisional application under 35 U.S.C. §§ 119(e) and 365(c), the prior art dates accorded these reference patents are the same under pre and post-AIPA § 102(e). Thus, a patent issuing from an application filed under 35 U.S.C. § 111(a), which claims the benefit of an intermediate International Application and a prior United States provisional application, would be accorded the application's actual filing date under 35 U.S.C. § 111(a) as its prior art date.



1. Post-AIPA § 102(e)(2) date of the patent: 01 Apr 2000

The patent is available as prior art against:

- (a) any application filed on or after 29 Nov 2000; or
- (b) any application filed after 01 Apr 2000 which has been voluntarily published.

2. Pre-AIPA § 102(e) date of the patent: 01 Apr 2000

The patent is available as prior art against:

- (a) any application filed after 01 Apr 2000 but before 29 Nov 2000 which has not been voluntarily published.

Note: The post-AIPA § 102(e)(2) date and the pre-AIPA § 102(e) date are the same.

Example 7: Reference Patent issued from an Application filed under 35 U.S.C. § 111(a), which is a Continuation of the National Stage of an International Application.

For reference patents issued from applications filed under 35 U.S.C. § 111(a), which claim the benefit of the filing dates of prior International Applications pursuant to 35 U.S.C. §§ 120 and 365(c), which International Applications had complied with the National Stage requirements, the prior art dates accorded to these reference patents by post-AIPA § 102(e)(2) are different than the prior art dates accorded by pre-AIPA § 102(e). A patent issued from an application filed under 35 U.S.C. § 111(a), which was a continuation of an International Application which had complied with the National Stage requirements, will have its § 111(a) filing date as its prior art date under post-AIPA § 102(e)(2).

Errata

"All reference to Patent No. 6,180,216 to Mark John Steinhart, et al of Ohio, for TISSUE PAPER appearing in the Official Gazette of January 30, 2001 should be deleted since no patent was granted."

"All reference to Patent No. 6,180,768 to Geert Maertens, et al of Brugge, European Patent Office for NEW SEQUENCES OF HEPATITIS C VIRUS GENOTYPES AND THEIR USE AS PROPHYLACTIC, THERAPEUTIC AND DIAGNOSTIC AGENTS appearing in the Official Gazette of January 30, 2001 should be deleted since no patent was granted."

"All reference to Patent No. 6,181,581 to Robert W. Johnson Jr., et al of Raleigh, NC for MULTI-MODE POWER CONVERTERS INCORPORATING BALANCER CIRCUITS AND METHODS OF OPERATION THEREOF appearing in the Official Gazette of January 30, 2001 should be deleted since no patent was granted."

"All reference to Patent No. 6,181,986 to Toshiro Akira of Japan, for METHOD OF CORRECTING TRANSFER OF A THIN MATERIAL AND A THIN MATERIAL TRANSFER APPARATUS appearing in the Official Gazette of January 30, 2001 should be deleted since no patent was granted."

"All reference to Patent No. 6,183,061 to William E. Bland, et al of California, for HYBRID PRINTMASK FOR MULTIDROP INKJET PRINTER appearing in the Official Gazette of February 06, 2001 should be deleted since no patent was granted."

"All reference to Patent No. 6,183,983 to Haruya Sato, et al of Chiba-ken, Japan for PROTEIN MODIFICATION METHOD appearing in the Official Gazette of February 06, 2001 should be deleted since no patent was granted."

"All reference to Patent No. 6,184,240 to James Berger Camden to Ohio, for METHODS OF TREATING CANCER WITH BENZIMIDAZOLES appearing in the Official Gazette of February 06, 2001 should be deleted since no patent was granted."

"All reference to Patent No. 6,185,902 to Heinz Focke, et al of Verden, Germany for METHOD AND APPARATUS FOR HANDLING REELS appearing in the Official Gazette of February 06, 2001 should be deleted since no patent was granted."